



NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-237 and 50-249; NRC-2022-0025]

Constellation Energy Generation, LLC;

Dresden Nuclear Power Station, Units 2 and 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued an exemption in response to an October 28, 2021, request from Exelon Generation Company, LLC to allow the submittal of sufficient Dresden Nuclear Power Station, Units 2 and 3, subsequent license renewal applications no later than 3 years prior to expiration of the existing renewed operating licenses and still place the licenses in timely renewal under NRC regulations. On February 1, 2022, Exelon Generation Company, LLC was renamed Constellation Energy Generation, LLC.

DATES: The exemption was issued on March 15, 2022.

ADDRESSES: Please refer to Docket ID **NRC-2022-0025** when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID **NRC-2022-0025**. Address questions about Docket IDs in Regulations.gov to Stacy Schumann; telephone: 301-415-0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC's Agencywide Documents Access and Management System**

(ADAMS): You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please

contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to PDR.Resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- **NRC's PDR:** You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays

FOR FURTHER INFORMATION CONTACT: Russell S. Haskell, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-415-1129, email: Russell.Haskell@nrc.gov.

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: March 16, 2022.

For the Nuclear Regulatory Commission.

Russell S. Haskell, Project Manager,
Plant Licensing Branch III,
Division of Operating Reactor Licensing,
Office of Nuclear Reactor Regulation.

Attachment – Exemption.

NUCLEAR REGULATORY COMMISSION

Docket Nos. 50-237 and 50-249

Constellation Energy Generation, LLC

Dresden Nuclear Power Station, Units 2 and 3

Exemption

I. Background.

Constellation Energy Generation, LLC (the licensee), is the holder of Renewed Facility Operating License Nos. DPR-19 and DPR-25 which authorize operation of the Dresden Nuclear Power Station, Units 2 and 3, respectively. These units are boiling-water reactors located in Grundy County, Illinois. The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, Commission) now or hereafter in effect. The current operating licenses for Dresden Nuclear Power Station, Units 2 and 3, expire on December 22, 2029, and January 12, 2031, respectively.

II. Request/Action.

By letter dated October 28, 2021, Exelon Generation Company, LLC requested an exemption from 10 CFR 2.109(b) to allow the subsequent license renewal applications (SLRAs) for Dresden Nuclear Power Station, Units 2 and 3, to be submitted no later than 3 years prior to the expiration of the existing licenses and still receive timely renewal protection under 10 CFR 2.109(b). On February 1, 2022 (ADAMS Accession No. ML22032A333), Exelon Generation Company, LLC was renamed Constellation Energy Generation, LLC.

Under 10 CFR 54.17(a), the NRC requires that the filing of an application for a renewed license be in accordance with, among other regulations, 10 CFR 2.109(b),

“Effect of timely renewal application.” In turn, 10 CFR 2.109(b) states “If the licensee of a nuclear power plant licensed under 10 CFR 50.21(b) or 50.22 files a sufficient application for renewal of either an operating license or a combined license at least 5 years before the expiration of the existing license, the existing license will not be deemed to have expired until the application has been finally determined.”

III. Discussion.

Under 10 CFR 54.15, exemptions from the requirements of Part 54 are governed by 10 CFR 50.12. Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present, as defined in 10 CFR 50.12(a)(2). In its application, the licensee stated that three special circumstances apply to its request. The three special circumstances that the licensee included in its request are:

- 1) Application of the regulation would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.
- 2) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated.
- 3) It is in the public interest to grant the exemption based on new and material circumstances that did not exist when the NRC adopted Section 2.109(b).

A. The Exemption is Authorized by Law

This exemption would allow the licensee to submit sufficient SLRAs for Dresden Nuclear Power Station, Units 2 and 3, no later than 3 years prior to the expiration of its existing licenses and the licenses would still be in timely renewal under 10 CFR 2.109(b). Section 2.109 implements Section 9(b) of the Administrative Procedure Act

(APA), 5 U.S.C. § 558(c), which states:

When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.

The 5-year time period specified in 10 CFR 2.109 is the result of a discretionary agency rulemaking under Sections 161 and 181 of the Atomic Energy Act of 1954, as amended, and not required by the APA. As stated above, 10 CFR 54.17(a) requires that the filing of an application for a renewed license be in accordance with, among other regulations, 10 CFR 2.109(b). In addition, 10 CFR 54.15 allows the NRC to grant exemptions from the requirements of 10 CFR Part 54. The NRC has determined that granting this exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, the APA, or the NRC's regulations. Therefore, the exemption is authorized by law.

B. The Exemption Presents no Undue Risk to Public Health and Safety

The requested exemption to allow a 3-year time period, rather than the 5 years specified in 10 CFR 2.109(b), for the licensee to submit sufficient SLRAs and place the licenses in timely renewal is a scheduling change. The action does not change the manner in which the plant operates and maintains public health and safety because no additional changes are made as a result of the action. The NRC expects that a period of 3 years provides sufficient time for the NRC to perform a full and adequate safety and environmental review, and for the completion of the hearing process. Pending final action on the SLRAs, the NRC will continue to conduct all regulatory activities associated with licensing, inspection, and oversight, and will take whatever action may be necessary to ensure adequate protection of the public health and safety. The existence of this exemption does not affect NRC's authority, applicable to all licenses, to modify, suspend, or revoke a license for cause, such as a serious safety concern. Based on the above, the NRC finds that the action does not cause undue risk to public health and safety.

C. The Exemption is Consistent with the Common Defense and Security

The requested exemption to allow a 3-year time period, rather than the 5 years

specified in 10 CFR 2.109(b), for the licensee to submit sufficient SLRAs and place the licenses in timely renewal is a scheduling change. The exemption does not change any site security matters. Therefore, the NRC finds that the action is consistent with the common defense and security.

D. Special Circumstances

The purpose of 10 CFR 2.109(b), as it is applied to nuclear power reactors licensed by the NRC, is to implement the “timely renewal” provision of Section 9(b) of the APA, 5 U.S.C. § 558(c), which states:

When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.

The underlying purpose of this “timely renewal” provision in the APA is to protect a licensee who is engaged in an ongoing licensed activity and who has complied with agency rules in applying for a renewed or new license from facing license expiration as the result of delays in the administrative process.

On December 13, 1991, the NRC published the final license renewal rule, 10 CFR Part 54, with associated changes to 10 CFR Parts 2, 50, and 140, in the *Federal Register* (56 FR 64943). The statements of consideration discussed the basis for establishing the latest date for filing license renewal applications and the timely renewal doctrine (56 FR 64962). The statements of consideration stated that:

Because the review of a renewal application will involve a review of many complex technical issues, the NRC estimates that the technical review would take approximately 2 years. Any necessary hearing could likely add an additional year or more. Therefore, in the proposed rule, the Commission modified § 2.109 to require that nuclear power plant operating license renewal applications be submitted at least 3 years prior to their expiration in order to take advantage of the timely renewal doctrine.

No specific comment was received concerning the proposal to add a 3-year provision for the timely renewal provision for license renewal. The current regulations require licensees to submit decommissioning plans and related financial assurance information on or about 5 years prior to the expiration of their operating licenses. The Commission has concluded that, for consistency, the deadline for submittal of a license renewal application should be 5 years prior to the expiration of the current operating license. The timely renewal provisions of § 2.109 now reflect

the decision that a 5-year time limit is more appropriate.

Thus, the NRC originally estimated that 3 years was needed to review a renewal application and to complete any hearing that might be held on the application. The NRC changed its original deadline from 3 years to 5 years to have consistent deadlines for when licensees must submit their decommissioning plans and related financial assurance information and when they must submit their license renewal applications to place their licenses in timely renewal.

Application of the 5-year period in 10 CFR 2.109(b) is not necessary to achieve the underlying purpose of the timely renewal provision in the regulation if the licensee files sufficient Dresden Nuclear Power Station, Units 2 and 3, SLRAs no later than 3 years prior to expiration of the licenses. The NRC's current schedule for review of SLRAs is to complete its review and make a decision on issuing the renewed license within 18 months of receipt if there is no hearing. If a hearing is held, the NRC's model schedule anticipates completion of the NRC's review and of the hearing process, and issuance of a decision on the license renewal application within 30 months of receipt.

However, it is recognized that the estimate of 30 months for completion of a contested hearing is subject to variation in any given proceeding. A period of 3 years (36 months), nevertheless, is expected to provide sufficient time for performance of a full and adequate safety and environmental review, and completion of the hearing process. Meeting this schedule is based on a complete and sufficient application being submitted and on the review being completed in accordance with the NRC's established license renewal review schedule.

Based on the above, the NRC finds that the special circumstance of 10 CFR 50.12(a)(2)(ii) is present in the particular circumstance of Dresden Nuclear Power Station, Units 2 and 3.

In addition, the NRC finds that the special circumstance of 10 CFR 50.12(a)(2)(iii) is present in the circumstances of Dresden Nuclear Power Station, Units 2 and 3. Compliance with § 2.109(b) would result in undue hardship or other costs that are

significantly in excess of those contemplated when the regulation was adopted. In its application, Exelon (now Constellation) stated that the decision to continue power operation at Dresden Nuclear Power Station, Units 2 and 3, depended on economic and legislative factors that evolved in a way that did not permit the preparation and submission of SLRAs 5 years prior to each unit's license expiration date. The licensee further stated that if the exemption is not granted, and it submits its SLRAs less than 5 years before license expiration, then the licensee would face the risk of being forced to shut down if the application is not approved before the current licenses expire. The impact of changes in economic and legislative conditions on licensees' decisions to pursue license renewal was not a factor considered at the time the timely renewal rule was issued. The NRC therefore finds that the special circumstance of 10 CFR 50.12(a)(2)(iii) also is present. Because the NRC staff finds that special circumstances exist under 10 CFR 50.12(a)(2)(ii) and 10 CFR 50.12(a)(2)(iii), the NRC staff did not consider whether special circumstances also exist under 10 CFR 50.12(a)(2)(vi), as presented by the licensee in its exemption request.

E. Environmental Considerations

The NRC has determined that the issuance of the requested exemption meets the provisions of the categorical exclusion in 10 CFR 51.22(c)(25). Under 10 CFR 51.22(c)(25), the granting of an exemption from the requirements of any regulation of chapter 10 qualifies as a categorical exclusion if (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involves one of several matters, including scheduling requirements (§ 51.22(c)(25)(iv)(G)). The basis for NRC's determination is provided in the following evaluation of the requirements in 10 CFR 51.22(c)(25)(i)-(vi)

Requirements in 10 CFR 51.22(c)(25)(i)

To qualify for a categorical exclusion under 10 CFR 51.22(c)(25)(i), the exemption must involve a no significant hazards consideration. The criteria for making a no significant hazards consideration determination are found in 10 CFR 50.92(c). The NRC has determined that the granting of the exemption request involves no significant hazards consideration because allowing the submittal of the license renewal application no later than 3 years before the expiration of the existing license and deeming the license in timely renewal under 10 CFR 2.109(b) does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Therefore, the requirements of 10 CFR 51.22(c)(25)(i) are met.

Requirements in 10 CFR 51.22(c)(25)(ii) and (iii)

The exemption constitutes a change to the schedule by which the licensee must submit its SLRAs and still place the licenses in timely renewal, which is administrative in nature, and does not involve any change in the types or significant increase in the amounts of effluents that may be released offsite and does not contribute to any significant increase in occupational or public radiation exposure. Accordingly, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, and no significant increase in individual or cumulative public or occupational radiation exposure. Therefore, the requirements of 10 CFR 51.22(c)(25)(ii) and (iii) are met.

Requirements in 10 CFR 51.22(c)(25)(iv)

The exempted regulation is not associated with construction, and the exemption does not propose any changes to the site, alter the site, or change the operation of the site. Therefore, the requirements of 10 CFR 51.22(c)(25)(iv) are met because there is no significant construction impact.

Requirements in 10 CFR 51.22(c)(25)(v)

The exemption constitutes a change to the schedule by which the licensee must submit its SLRAs and still place the licenses in timely renewal, which is administrative in nature, and does not impact the probability or consequences of accidents. Thus, there is no significant increase in the potential for, or consequences of, a radiological accident. Therefore, the requirements of 10 CFR 51.22(c)(25)(v) are met.

Requirements in 10 CFR 51.22(c)(25)(vi)

To qualify for a categorical exclusion under 10 CFR 51.22(c)(25)(vi)(G), the exemption must involve scheduling requirements. The exemption involves scheduling requirements because it would allow the licensee to submit SLRAs for Dresden Nuclear Power Station, Units 2 and 3, no later than 3 years prior to the expiration of the existing licenses, rather than the 5 years specified in 10 CFR 2.109(b), and still place the licenses in timely renewal under 10 CFR 2.109(b). Therefore, the requirements of 10 CFR 51.22(c)(25)(vi) are met.

Based on the above, the NRC concludes that the proposed exemption meets the eligibility criteria for a categorical exclusion set forth in 10 CFR 51.22(c)(25). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

IV. Conclusions.

Accordingly, the NRC has determined that, pursuant to 10 CFR 54.15 and 10 CFR 50.12, the requested exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances, as defined in 10 CFR 50.12(a)(2), are present. Therefore, the NRC hereby grants the licensee a one-time exemption for Dresden Nuclear Power Station, Units 2 and 3, from 10 CFR 2.109(b) to allow the submittal of the Dresden Nuclear Power Station, Units 2 and 3, SLRAs no later than 3 years prior to expiration of the operating licenses.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 15th day of March 2022.

For the Nuclear Regulatory Commission.

/RA/

Gregory F. Suber, Deputy Director,
Division of Operating Reactor Licensing,
Office of Nuclear Reactor Regulation.